

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**JAMES RAY MOORE,**

**Petitioner,**

**V.**

**GIBSON, Lincoln Regional Center  
Superintendent,**

**Respondent.**

**CASE NO. 4:10CV3022**

# MEMORANDUM AND ORDER

This matter is before the court on Petitioner's Appeal. (Filing No. [9.](#)) Petitioner seeks to appeal the court's March 23, 2010, Memorandum and Order which deemed the Petition insufficient and required that Petitioner file an amended Petition.<sup>1</sup> (Filing No. [8.](#)) However, that Memorandum and Order is not a final order, and judgment has not been entered in this matter. Petitioner's Appeal is therefore construed as a Motion for Interlocutory Appeal. As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such “controlling question of law” is implicated. The court’s March 23, 2010, Memorandum and Order does not involve controlling questions of law as to which there is substantial ground for difference of opinion, and an immediate appeal would not materially advance the ultimate termination of this litigation. Therefore, there is no reason why the present appeal should proceed prior to entry of a final judgment in this matter. For

<sup>1</sup>In its entirety, the Appeal states “Moore appeal [sic] all of the 3.23.10 order and request to proceed in forma pauperis annexing his poverty affidavit.” (Filing No. 9.)

these reasons, Petitioner's Appeal, construed as a Motion for Interlocutory Appeal, is denied. Petitioner's Motion for Leave to Appeal In Forma Pauperis (Filing No. [10](#)) is denied as moot.

As set forth in the court's March 23, 2010, Memorandum and Order, the Petition on file does not substantially follow any form and does not clearly indicate the grounds alleged. (Filing No. [8](#).) The court allowed Petitioner until April 23, 2010, in which to file an amended Petition and warned Petitioner that failure to file an amended Petition by that date would "result in dismissal of the Petition without further notice." (*Id.*) Petitioner has not filed an amended Petition.

IT IS THEREFORE ORDERED that:

1. The pending Petition for Writ of Habeas Corpus (Filing No. [1](#)) is dismissed without prejudice.
2. A separate judgment will be entered in accordance with this Memorandum and Order.
3. Petitioner's Appeal, (Filing No. [9](#)), construed as a Motion for Interlocutory Appeal, is denied. The Clerk of the court is directed not to process the Notice of Appeal. All other pending motions are denied as moot.

DATED this 30<sup>th</sup> day of April, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge

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